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## BEFORE THE BOARD OF PATENT APPEALS
## AND INTERFERENCES

Application Number: 10/649,585
Filing Date: August 27, 2003
Appellant(s): CUI ET AL.

_____
Tracy M. Hitt
For Appellant

## EXAMINER'S ANSWER

This is in response to the appeal brief filed 4/11/2011 appealing from the Office

action mailed 6/14/2010.

**(1) Real Party in Interest**

A statement identifying by name the real party in interest is contained in the brief.

**(2) Related Appeals and Interferences**

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

**(3) Status of Claims**

The statement of the status of claims contained in the brief is correct.

**(4) Status of Amendments After Final**

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

**(5) Summary of Claimed Subject Matter**

The summary of claimed subject matter contained in the brief is correct.

**(6) Grounds of Rejection to be Reviewed on Appeal**

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

### (7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

### (8) Evidence Relied Upon

Gerace (5,848,396)   12-1998

Graham (20060122884)   06-2006

### (9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

### *Claim Rejections - 35 USC § 103*

Claims 109-156  rejected under 35 U.S.C. 103(a) as being unpatentable over Gerace (5,848,396) in view of Graham (20060122884).

Claims 109, 125, 141:  Gerace discloses a method, comprising:

receiving one or more advertisements (Figs. 1, 2, 3a);

receiving advertisement performance information for the one or more advertisements (Fig. 5b; Appendix IV, col 33-34);

identifying one or more content concepts of a document (Fig 3a, 3d, 3g);

receiving, for each content concept of the document, content concept performance information (Fig. 3d; 4:35-47);

determining, for each content concept of the document, at least one of the one or more advertisements associated with the content concept (16:45-50);

modifying, using at least one processor, the advertisement performance information for at least one of the one or more advertisements using the determined content concept performance information for the content concept associated with the at least one of the one or more advertisements (18:10-26); and

forwarding, based on the modified advertisement performance information, at least one of the one or more advertisements (Figs. 1, 2, 3a; 20:9-20; 19-60-65).

Additionally, on 1/21/10, Applicant presented significant claim amendments.

Gerace disclsoes:

identifying advertisements that are available for presentation with a document (Figs. 2, 3a, 5a, 5b, 5c, 5d);

receiving, by at least one processor, initial advertisement performance information for the advertisements, the advertisement performance information for each advertisement specifying a measure of performance computed based on previous presentations of the advertisement (33:35-34:30);

identifying, by at least one processor, one or more concepts to which the document is relevant, concepts being identified based on content of the document (16:35-55; 10:60-65; 14:25-35);

receiving, by at least one processor and, performance information representing an aggregate performance of advertisements that were presented with the document (12:55-65; 33:35-34:30 );

modifying, bv at least one processor, the initial advertisement performance information for an advertisement using the performance information for content an identified concept corresponding to the advertisement (20:8-20; 18:10-26); and

forwarding, based on the modified advertisement performance information, at least one of the advertisements (20:8-20; Figs. 2, 3a).

Gerace does not explicitly disclose for each identified concept for the document, content-concept performance, and corresponding to the concept, using the concept performance, or performance based on concept.

However, Gerace discloses tracking ad performance (12:55-65; 33:35-34:30) and improving ad performance targeting (20:8-20; 18:10-26). Gerace further discloses that ads are known for their type of information (3:4-7; 12:25-30) and that ads are placed based on the relevance of ad content to webpage content (16:35-55; 10:60-65; 14:25-35). And, Gerace discloses that the "Media (visible/playable here)" where an ad is shown is tracked (33:55-60). Also, Gerace tracks every ad presented to a user and with what other content on the page the ad was presented (6:45-7:45). And, Gerace discloses that ads are presented so to be optimized both for relevant content and style (5:20-25).

Gerace further discloses correlating page content and ad content:

"A Page object 35a cross references a User Interface Object 37c which specifies which Page Display Object 35c and which agate information (content and presentation) is appropriate for the current user. Page Data Objects 35b hold the agate or other data to be displayed to end users. Included are advertisements (objects

themselves) which may be integrated into the agate data.  Preferably
advertisements are positioned along the periphery (i.e., above, below, left or
right) of the agate data, as defined by a respective Page Display Object 35c.
Accordingly, Page Data Objects 35b support Page Display Objects 35c which
outline the possible screen content and presentation formats in which agate
data advertisements are to be displayed. (7:18-37);

Based on these recorded details, program 31 constantly and automatically tailors
screen views (content and presentation) and advertisement selection (subject matter
and presentation) for the user.(17:1-17).

Hence, it is obvious that Gerace can track performance for different page
content/concepts and ad content relevance.  As a further example of this, Graham
(20060122884) discloses concept/topic for documents and presenting relevant ads
(Fig. 1c; 9a; claim 27) and also relevance scores ([32, 39, 47-49]).  Hence, it is obvious
that Gerace can track performance for different page content/concepts/topics and ad
content relevance.  One would be motivated to do this to better target relevant ads.

Claims 110, 126, 142. Gerace discloses the method of claim 109, wherein the
advertisement performance information includes one or more of selection information
and impression information for the one or more advertisements (Appendix IV, col 33-
34).

Claims 111, 127, 143. Gerace discloses the method of claim 109, wherein the
document is a Web page identified by a URL (Fig. 2).

Claims 112, 128, 144. Gerace discloses the method of claim 109, wherein modifying the advertisement performance information for the at least one of the one or more advertisements comprises:

identifying a content concept associated with the at least one of the one or more advertisements (3:4-10); and

receiving content concept performance information associated with the content concept associated with the at least one of the one or more advertisements (3:4-10; 34:24-26). Also, see rejection of independent claim above.

Claims 113, 129, 145. Gerace discloses the method of claim 109, wherein receiving, for each content concept of the document, the content concept performance information comprises determining, for each content concept of the document, content concept performance information using the advertisement performance information for the at least one of the one or more advertisements associated with the content concept (3:4-10; 34:24-26; 16:45-50). Also, see rejection of independent claim above.

Claims 114, 130, 146. Gerace discloses the method of claim 113, wherein: determining, for each content concept of the document, the at least one of the one or more advertisements associated with the content concept comprises determining, for a content concept of the document, a first advertisement and a second advertisement associated with the content concept; and

determining, for each content concept of the document, content concept performance information using the advertisement performance information for the at least one of the one or more advertisements associated with the content concept comprises processing,

for the content concept of the document, the advertisement performance information for

the first advertisement and the second advertisement associated content concept (3:4-

10; 34:24-26; 16:45-50, "appropriate advertisements").  Also, see rejection of

independent claim above

Claims 115, 131, 147. Gerace discloses the method of claim 109, wherein the

concept performance information includes one or more of selection information and

impression information for the one or more concepts (Fig. 3d; 4:35-47).  Also, see

rejection of independent claim above

Claims 116, 132, 148. Gerace discloses the method of claim 109, further

comprising determining a confidence measure for the advertisement performance

information (19:60-65; 19:26-31).

Claims 117, 133, 149. Gerace discloses the method of claim 116, wherein

determining the confidence measure for the advertisement performance information

comprises determining a confidence measure for the advertisement performance

information based on one or more of the age of data included in the advertisement

performance information and the amount of the data included in the advertisement

performance information (18:15-26).

Claims 118, 134, 150. Gerace discloses the method of claim 109, wherein the at

least one of the one or more advertisements for which advertisement performance

information is modified is the same as the forwarded at least one of the one or more

advertisements (19:60-65).

Claims 119, 135, 151. Gerace discloses the method of claim 109, wherein the at least one of the one or more advertisements for which advertisement performance information is modified is different from the forwarded at least one of the one or more advertisements (10:9-13, "in order to achieve rapid and direct benefits. . .allows the sponsor to enter new advertising contracts online").

Claims 120, 136, 152. Gerace discloses the method of claim 109, wherein forwarding, based on the modified advertisement performance information, the at least one of the one or more advertisements comprises comparing the modified advertisement performance information to a threshold (claims 13, 16; 15:1-17; 15:37-45) and forwarding the ad if it performs above a threshold (18:10-26).

Claims 121, 137, 153. Gerace discloses the method of claim 109, wherein: identifying the one or more content concepts of the document comprises identifying a first content concept and a second content concept of the document; and determining, for each content concept of the document, the at least one of the one or more advertisements associated with the content concept comprises determining that one of the one or more advertisements is associated with both the associated with the first content concept and the second content concept of the document (16:37-55, travel and Detroit).

Claims 122, 138, 154. Gerace discloses the method of claim 109, wherein: receiving the advertisement performance information for the one or more advertisements comprises receiving advertisement targeting information for the one or more advertisements (4:35-47); and

receiving the content concept performance information comprises receiving content concept targeting performance information (Fig. 3d, 3f, 3g). Gerace further discloses tracking aggregate ad performance (33:35-34:30).

Claims 123, 139, 155. Gerace discloses the method of claim 109, further comprising: identifying a first advertisement of the one or more advertisement that does not have advertisement performance information (18:10-26);

determining at least one of the one or more content concepts of the document associated with the first advertisement (16:37-55);

receiving content concept information for the at least one of the one or more content concepts associated with the first advertisement (3:4-10); and

determining, based on the received content concept information for the at least one of the one or more content concepts associated with the first advertisement, advertisement performance information for the first advertisement (Appendix IV, col 33-34).

Claims 124, 140, 156. Gerace does not explicitly disclose, wherein determining the advertisement performance information for the first advertisement comprises determining a weighted-sum of the content concept information for the at least one of the one or more content concepts associated with the first advertisement.

However, Gerace discloses tracking ad content concept information (3:4-10) and tracking ad performance based on different ad variables (Appendix IV, col 33-34; 34:23-26, "Advertiser selects packages to analyze[,] Advertiser selects variables to consider"). And, Gerace discloses scalability (34:18-20) and weighted targeting criteria (15:1-10) and evaluating total scores related to targeting (claims 13, 22). Therefore, it would have

been obvious to one having ordinary skill in the art at the time the invention was made

that Gerace can determine the advertisement performance information for the first

advertisement comprises determining a weighted-sum of the content concept

information for the at least one of the one or more content concepts associated with the

first advertisement. One would have been motivated to do this in order to better assess

the influence of different ad variables that a related to targeting.

### (10) Response to Argument

Examiner notes that the combination of the prior art renders obvious the features

of the Appellant's independent claim 1.

In Appellant's Appeal Brief dated 4/11/11 on page 5, Appellant states,

"I. Gerace, Graham and asserted combinations thereof fail to describe or suggest

modifying the initial advertisement performance information, as recited by claim 109";

"modifying, by at least one processor, the initial advertisement performance

information for an advertisement using the concept performance information for an

identified concept corresponding to the advertisement".

On page 8, 9, Appellant states, "According to claim 109, the "advertisement

performance information for each advertisement specif[ies] a measure of performance

computed based on previous presentations of the advertisement," and it is this

advertisement performance information that is modified by the concept performance

information."

On page 9, 10, "For example, none of the relied-upon portions of Graham disclose performance measures (e.g., click-through-rates) for advertisements that have been presented with a particular document."

Examiner notes that it is the Applicant's claims as stated in the Applicant's claims that are being rejected with the prior art. Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). In interpreting claim language, the broadest reasonable meaning of the words in their ordinary usage as they would be understood by one of ordinary skill in the art is applied, taking into account whatever enlightenment by way of definitions or otherwise that may be afforded by the written description. See In re Morris', 127 F.3d 1048, 1054 (Fed. Cir. 1997). See also In ream. Acad. of Sci. Tech. Ctr., 367 F.3d 1359, 1364 (Fed. Cir. 2004) andIn re Sneed, 710 F.2d 1544, 1548 (Fed. Cir. 1983). Claims are given their broadest reasonable construction. See *In re Hyatt*, 211 F.3d 1367, 54 USPQ2d 1664 (Fed. Cir. 2000). It is Appellant's burden to precisely define the invention. See In re Morris, 127 F.3d 1048, 1056 (Fed. Cir. 1997).

And, first note in Gerace that ad success can be measured by clicks or click throughs or, click thru rate (if you know the clicks/hits/impressions and click thrus, you also know the click thru rate as click thru rate is click thrus/impressions):

"In accordance with another aspect of the present invention, there is a module (e.g., advertisement module) that records history of users viewing the advertisements. For each advertisement, the module records (i) number of times viewed by a user; (ii)

number of times selected for further information by a user, and/or (iii) number of

purchases initiated from display of the advertisement to a user. (2:35-42);

[claim] 7. Apparatus as claimed in claim 5 wherein the advertising component

further records history of users viewing the advertisements, including for each

advertisement, at least one of (i) number of times viewed by a user, (ii) number of

times selected for further information, and (iii) number of times a purchase was

obtained through the advertisement.

The pricing may be dependent on the number of times the ad is viewed

by users (i.e., a "hit"), number of times a user selects to view more information from the

ad (i.e., a "click through") and/or the number of times an actual order is generated."

(12:10-20);

Also the number of hits and click throughs purchased and achieved are

designated in the Detailed Package Report".(13:5-10; also, see Reporting in Appendix

IV with numerous different HT or hit and CT or click thru statistics).

Hence, Gerace discloses measuring ad success or ad performance.

Gerace further discloses an initial ad performance measure or an ad control

group:

"To ensure that sponsors achieve the optimal result from the ads they place,

program 31 combines regression analysis with the above weighting technique to

achieve real-time, automatic optimization as discussed previously. Under this auto-

targeting system, an ad package is shown to general users. After a large number (e.g.,

10,000) hits, program 31 runs a regression on a subject Ad Package Object 33b to see

what characteristics are important, and who (type of user profile) the ad appeals to most. Program 31 then automatically enters weighting information based on that regression to create a targeted system and runs the advertisement (Ad Package Object 33b) again <u>in front of this new targeted group</u>. <u>Program 31 then runs a regression every 10,000 hits, for example, including a group of 500 general people</u> **as a control**, and adjusts the weighting. This continues until the Ad Package is exhausted (i.e., the number of hits and click throughs are achieved). (18:10-26)

The program 31 then generates a report using this data and uses standard statistical regression techniques to find correlation between success and different demographic <u>and/or usage information</u>, and reports those as well. For example, a report comprises several defined elements, including overall success of the advertisement, breakdown by requested demographic elements, <u>comparison of target market with control group</u>, number of click through requested versus number achieved to date, as well as the time remaining in an advertisement. Finally, program 31 completes a regression analysis using data stored in Ad Package Objects 33b and User Objects 37, and suggests other demographic groups which a sponsor might want to consider for a subsequent ad". (18:60-19:6).

Note in Gerace that there is an initial group or a control group. This functions as the Appellant's initial ad performance. Then, Gerace compares the initial or control group ad performance to the targeted ad group performance.

Hence, in Gerace, ad success is measured by ad performance as measured by metrics like hits, click thrus, etc. And, note in Gerace that there is an initial ad group or

a control group. This functions as the Appellant's initial ad performance. Then, Gerace compares the initial or control ad group performance to the targeted ad group performance.

Also, in Gerace, the targeting characteristics are modified or improved in order to get better ad success performance:

"Finally, program 31 completes a regression analysis using data stored in Ad Package Objects 33b and User Objects 37, and suggests other demographic groups which a sponsor might want to consider for a subsequent ad (18:60-19:6);

Further the reporting subroutine 41 of program 31 calculates a regression on the targeted demographic groups for the ads, and the results of the regression calculation are used to suggest other demographic characteristics that are important factors in the number of click throughs and/or number of purchases. The advertiser may also run a complete regression report for all or certain ad packages.13:12-20

The program 31 then generates a report using this data and uses standard statistical regression techniques to find correlation between success and different demographic and/or usage information, and reports those as well. 18:60-65

In order to achieve rapid and direct benefits from the detailed reporting of program 31, program 31 allows the sponsor to enter new advertising contracts on line. If a sponsor recognizes that, for example, 25-35 year-old women tend to purchase frequently and respond to their still, forest green colored advertisements most often, program 31 allows sponsors to place that type of ad in front of the subject target

market segment during a reporting cycle. Thus, program 31 enables <u>updating of the</u>

<u>Sponsor and Ad Objects 33 during a reporting cycle to accommodate the foregoing.</u>

With respect to reporting, <u>if the reports of program 31 show that customers</u>

<u>respond to still advertisements more often than moving ones, bright colors more often</u>

<u>than darker ones, graphics rather than text, large text rather than small, detailed text or</u>

<u>square advertisements rather than bar style ones, such is relayed to the</u>

<u>sponsors/advertisers</u>.

To achieve the foregoing analysis, program 31 classifies aspects of each

advertisement (see Ad Objects 33d, FIG. 5d). In a preferred embodiment, such

classification is automatically provided by a subroutine of main routine 39." (20:9-30).

Hence, Gerace discloses improved ad performance by improving ad targeting

criteria. And, Gerace compares the ad performance using targeting criteria to ad

performance using a ad control group.

Gerace does not explicitly disclose that ad targeting criteria can be concept

related. However, Gerace discloses a wide range of ad targeting criteria (Appendix IV,

col 33-34, note ad targeting criteria based on demographics, psychographics, mapping,

and "custom reports" characteristics where the "advertiser selects variables to

consider"). Also, note that Gerace discloses other "usage information" related to ad

targeting criteria (18:60-65). Also, note that Gerace further discloses that ads are

known for their type of information (3:4-7; 12:25-30) and that ads are placed based on

the relevance of ad content to webpage content (16:35-55; 10:60-65; 14:25-35). And,

Gerace discloses that where an ad is shown is tracked (33:55-60, "Media

(visible/playable here)"). Also, Gerace tracks every ad presented to a user and with what other content on the page the ad was presented (6:45-7:45). And, Gerace discloses that ads are presented so to be optimized both for relevant content and style (5:20-25).

Gerace further discloses correlating page content and ad content:

"A Page object 35a cross references a User Interface Object 37c <u>which specifies which Page Display Object 35c and which agate information (content and presentation) is appropriate for the current user.</u> Page Data Objects 35b hold the agate or other data to be displayed to end users. <u>Included are advertisements (objects themselves) which may be integrated into the agate data.</u> Preferably advertisements are positioned along the periphery (i.e., above, below, left or right) of the agate data, as defined by a respective Page Display Object 35c. <u>Accordingly, Page Data Objects 35b support Page Display Objects 35c which outline the possible screen content and presentation formats in which agate data advertisements are to be displayed.</u> (7:18-37;

<u>Based on these recorded details, program 31 constantly and automatically tailors screen views (content and presentation) and advertisement selection (subject matter and presentation) for the user.</u>(17:1-17).

Hence, it is obvious that Gerace's ad targeting criteria can be for different page content/concepts and ad content relevance. As a further example of this, Graham (20060122884) discloses advertising targeting ("[2] The present invention relates to online advertising management and more particularly to techniques for targeting

information in the Internet environment.  Specific embodiments can target advertising

and other marketing information.").  And, Graham discloses concepts/topics for

documents and presenting relevant ads  (Fig. 1c; 9a; claim 27) and also ad relevance

to concept scores ([32, 39, 47-49]).    Also, note in Table 1 how Graham calculates a

relevancy for each ad based on different concepts to a document and its concepts

([47], Table 1).  Also, critically, note how Graham discloses that ads can be targeted

based on user profile/interests and also ad to document concept correlations,

"[28]…Server 10 can retrieve advertisements 17a, 17b and 17c via Internet 21, for

example, based upon a determined relevancy between the user's interests, which can

be included in a profile, for example, the advertiser's concepts and the content of the

current document being viewed."

Hence, Gerace discloses measuring ad success/performance.  And, Gerace

discloses comparing  control group ad performance to different targeting criteria ad

performance.  And, Gerace discloses a wide range of targeting criteria.  And, Graham

discloses that targeting criteria can include user profile/interests and also ad to

document concept correlations.  Hence, it is obvious that Gerace's varied targeting

criteria can also include ad to document concept correlations.  One would be motivated

to do this to better target relevant ads.

Also, note that once Gerace further includes user profile/interests as well as

concept correlations (as in Graham) into Gerace's many targeting criteria, that Gerace

will also be comparing control group ad performance to targeting criteria ad

performance where the targeting criteria is concept correlations.  That is, since Gerace

compares control ad performance to targeting criteria ad performance, after Gerace

adds concept correlations to targeting criteria, the concept correlations are included in

the ad performance comparisons.  When concept correlations are included in targeting

criteria, the concept correlations are also included in targeting criteria performance

comparisons.

       As a further example, Gerace in Appendix IV (Appendix IV, col 33-34; note that

Appenidx IV is representative of other parts of the Gerace Specification, "Also the

number of hits and click throughs purchased and achieved are designated in the

Detailed Package Report", 13:5-10) discloses that targeting criteria performance can

be compared to control group performance ("demographic breakdown of success v.

control group") and that there can be multiple differing targeting criteria ("demographic",

"psychographic", "mapping", "purchase density", "custom reports…advertiser selects

variables to consider").  And, Graham discloses that ads can be targeted based on

user profile/interests and also ad to document concept correlations, "[28]…Server 10

can retrieve advertisements 17a, 17b and 17c via Internet 21, for example, based upon

a determined relevancy between the user's interests, which can be included in a

profile, for example, the advertiser's concepts and the content of the current document

being viewed".  Hence, it is obvious that Gerace's other targeting variables to consider

can include Graham's targeting using concept correlations.  And, it is obvious that the

reporting on a targeting ad control group compared to different ad targeting variables to

consider can be different targeting variables such as Graham's concept correlations.

Hence, Gerace discloses measuring ad success/performance. And, Gerace discloses comparing control group ad performance to different targeting criteria ad performance. And, Gerace discloses a wide range of targeting criteria. And, Graham discloses that targeting criteria can include user profile/interests and also ad to document concept correlations. Hence, the prior art discloses comparing control group ad performance to targeting criteria ad performance where the targeting criteria can be ad to document concept correlations.

Hence, the prior art combination renders obvious:

modifying the initial advertisement performance information;

modifying, by at least one processor, the initial advertisement performance information for an advertisement using the concept performance information for an identified concept corresponding to the advertisement;

advertisement performance information for each advertisement specif[ies] a measure of performance computed based on previous presentations of the advertisement, and it is this advertisement performance information that is modified by the concept performance information;

performance measures for advertisements and ad to document concept correlations.

Hence, the prior art renders obvious the Appellant's claims.

**(11) Related Proceeding(s) Appendix**

No decision rendered by a court or the Board is identified by the examiner in the

Related Appeals and Interferences section of this examiner's answer.


For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,


/Arthur Duran/
Primary Examiner, Art Unit 3622
5/4/2011


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